

Roadway Package System, Inc. and Chauffeurs, Teamsters and Helpers Local 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. Cases 11-CA-13077, 11-CA-13195, and 11-CA-13277

May 15, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On August 30, 1990, Administrative Law Judge J. Pargen Robertson issued the attached decision. The General Counsel and Respondent filed exceptions and supporting briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² as modified and to adopt the recommended Order as modified.

1. The judge found that the Respondent's alleged surveillance of the employees' union activities violated Section 8(a)(1). The evidence shows that prounion employees began handbilling activities in late January. The complaint alleged and the judge found that, on April 6, 1989, the Respondent's sort manager, Butch Riggelman, stood for 30 minutes by the guardhouse. He was visible to all employees arriving to and depart-

¹The General Counsel and the Respondent have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that Respondent unlawfully sought to prohibit handbilling by off-duty employees, we note that the Respondent concedes that it does not have a generalized rule prohibiting access to its property by such employees. In any event, no such rule was disseminated among employees.

In adopting the judge's finding that Respondent, through its hub manager, Dale Jones, threatened employees with plant closing in violation of Sec. 8(a)(1), Chairman Stephens does not rely on *Coradian Corp.*, 287 NLRB 1207 (1988), cited by the judge. Jones' speech is clearly distinguishable from the communication at issue in *Coradian*, in which Chairman Stephens dissented from the finding of a violation. Id. at 1207 fn. 4. Members Devaney and Raudabaugh agree that Jones' speech is distinguishable from the communication in *Coradian*. They therefore find it unnecessary to express a view at this time as to the validity of the relevant portion of that opinion.

In his decision, the judge inadvertently states that the employees handbilled on either March 16, 27, or 28, 1989. (All dates are in 1989 unless otherwise indicated.) The correct dates are March 26, 27, or 28.

²Unlike other employees at the in-plant meeting who also made remarks hostile to the Respondent's antiunion speech and who were not disciplined in any way, Rennick loudly and repeatedly disrupted the proceedings and refused two direct orders to clock out. The protection of the Act for the expression of union sentiments does not preclude an employer from disciplining an employee for such insubordinate conduct. See *Marico Enterprises*, 283 NLRB 726, 731-732 (1987).

ing from the plant, and he observed the handbillers' efforts to distribute prounion literature. The judge concluded that "Riggelman's conduct had the obvious and foreseeable result of tending to interfere with the employees' protected activities." We disagree. By the time of the incident, the employees had openly engaged in handbilling activity for approximately 2-1/2 months. It is well settled that where, as here, employees are conducting their activities openly on or near company premises, open observation of such activities by an employer is not unlawful. *Southwire Co.*, 277 NLRB 377, 378 (1985); *Porta Systems Co.*, 238 NLRB 192 (1978). Therefore, we dismiss this allegation.

2. In adopting the judge's finding that the Respondent violated Section 8(a)(1) through its threat to call the police in response to protected employee handbilling activities, we rely on clear Board precedent. *All American Gourmet*, 292 NLRB 1111 fn. 2 (1989). We do not agree with our dissenting colleague that because the Respondent did not seek to have the police actually arrest the handbillers, its unlawful act of threatening to call the police in the first place was rendered lawful.³

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for paragraph 3.

"3. Respondent by threatening to close its facility if its employees selected Chauffeurs, Teamsters and Helpers Local 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, as their collective-bargaining representative; by promulgating and attempting to enforce a no-solicitation, no-distribution rule which prohibited employees from soliciting or distributing union literature during nonwork times in nonwork areas; by threatening to call the police to its employees unless the employees stopped their handbilling activities on behalf of the Union; and by threatening to evict its employees because of their handbilling activities on behalf of the Union engaged in conduct violative of Section 8(a)(1) of the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Roadway Package System, Inc., Kernersville, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following as paragraph 1(a).

³Member Devaney would reverse the judge's finding that the Respondent's calling the police concerning the employees' handbilling violated Sec. 8(a)(1) by "implicitly" threatening employees with arrest. He notes that the Respondent's sort manager explicitly told the police officer on one occasion that he did not wish to make a formal complaint and that the officers never ordered the employees to leave. Under these circumstances, Member Devaney would not find the Respondent's calling the police coercive.

“(a) Engaging in conduct violative of Section 8(a)(1) of the Act by threatening to close its facility if its employees selected Chauffeurs, Teamsters and Helpers Local 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, or any other labor organization, as their collective-bargaining representative; by promulgating and attempting to enforce a no-solicitation, no-distribution rule which prohibits employees from soliciting or distributing union literature during nonwork times in nonwork areas; by threatening to call the police to its employees unless the employees stop their handbilling activities on behalf of the Union; and by threatening to evict its employees because of their handbilling activities on behalf of the Union.”

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to close our facility if our employees select Chauffeurs, Teamsters and Helpers Local 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT promulgate and attempt to enforce a no-solicitation, no-distribution rule which prohibits employees from soliciting or distributing union literature during nonwork times in nonwork areas.

WE WILL NOT threaten to call the police to our employees unless the employees stop their handbilling activities on behalf of the Union.

WE WILL NOT threaten to evict our employees because of their handbilling activities on behalf of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

ROADWAY PACKAGE SYSTEM, INC.

L. Timmins, Esq. and *Michael Jeannette, Esq.*, for the General Counsel.

John S. Burgin, Esq. and *A. Bruce Clarke, Esq.*, of Raleigh, North Carolina, for the Respondent.

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge. This matter was heard in Winston-Salem, North Carolina, on March 13, 14, and 15, 1990.

The complaint, as amended, alleges that Respondent violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act (the Act).

In her brief counsel for the General Counsel moved to delete the 8(a)(1) allegations “that occurred on April 7, 1989.” The April 7 allegations are included in paragraphs 8(b) and (d) of the complaint. The General Counsel’s motion is granted. The April 7 allegations in paragraphs 8(b) and (d) are deleted.

Respondent admitted that it is a Delaware corporation with a terminal located in Kernersville, North Carolina, where it is engaged in the business of pickup and delivery of small packages, and that during the past 12-month period, a representative period, in the course and conduct of its business operations, it performed services valued in excess of \$50,000 in States other than North Carolina. Respondent admitted that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Although Respondent, in its answer, denied that the Charging Party (the Union) is, and has been at material times, a labor organization within the meaning of Section 2(5) of the Act, at the hearing, it admitted the labor organization allegation for purposes of this proceeding.

All parties were given the opportunity to file briefs. Briefs were filed by the General Counsel and Respondent.

On the entire record, and after considering briefs filed by the parties, I make the following determinations.

The parties stipulated that a petition was filed by the Union for the hub employees of Respondent, in Case 11–RC–5467, on December 9, 1987. The parties entered into a stipulation for an election on January 22, 1988. An election was held on February 5, 1988. The Union filed objections and the Regional Director consolidated that matter for hearing with unfair labor practice allegations in Case 11–CA–12490, et al. On January 5, 1989, the parties agreed to a settlement which included a rerun election following the posting period for the agreed-to notice to employees.

The 8(a)(1) Allegations

The 8(a)(1) allegations include allegations that Respondent, through its agents, threatened its employees with closure of the terminal and loss of jobs because they engaged in union activity; that Respondent orally promulgated a no-solicitation, no-distribution rule prohibiting solicitation and dis-

tribution of union literature in nonwork areas during nonworktimes; that Respondent threatened employees with arrest for engaging in union activities; that Respondent engaged in surveillance of its employees' union activities; and that Respondent threatened to evict its employees because they engaged in union activities.

The evidence regarding those allegations includes the following.

Respondent Threatened its Employees with Closure of
the Terminal and Loss of Jobs Because They Engaged
in Union Activity

John Creger, who is currently employed by Respondent as a top pick off, testified about a meeting in mid-January 1989. Dale Jones, who was hub manager at that time, spoke to some six employees along with Creger's coordinator, Jason Grant:

Dale Jones stood up on the platform type. He said good morning and that the Union people would be coming in distributing cards and all. We didn't want the Union in that we were 40 million dollars in debt. If the Union came in we would have to close because we couldn't keep up with UPS. He used McClean [sic] as an example.

. . . .

Had the Union been fair to the men they could reduce the rates in order to compete and they would have kept their jobs.

Greg Strong testified about a January 17, 1989 speech by Dale Jones:

I specifically remember him saying, if the Union came in the plant would close down and we would about sixty million dollars in debt.

Dale Jones admitted meeting with employees on January 17, 1989, and again in late February or March 1989. According to Jones he never threatened to close the facility because of the Union. Jones testified that on January 17 he read an NLRB notice to employees. In late February or March, Jones discussed McLain Trucking with the employees. He testified:

[T]he McClain [sic] incident was an example that we were using or used this particular day to show that we—that we felt as a company we were opposed to Teamsters and they were trying to organize us, because we were in direct competition with UPS, and our at our young stage of the company we just couldn't afford it. We were in debt and that if we were organized that we felt that the Teamsters best interest was not with the employees of the company such as McClain [sic] Trucking and that a similar incident that could happen to RPS and never once said we would close the Kernersville facility.

Respondent Orally Promulgated a No-Solicitation, No-Distribution Rule Prohibiting Solicitation and
Distribution of Union Literature in Nonwork Areas
During Nonwork Times

Employee John Creger testified that he handbilled for the Union between the public street and Respondent's employee parking lot beginning in late January 1989. Creger was handbilling between 4:30 and 5 p.m. along with Teamsters Representative Bobby Blakney and employees John Marlin and Bobby Thomas. Creger 10 was not working at that time. His workshift at that time ran from 4:30 to 9:30 a.m. Creger testified that while they were handbilling,

Dale Jones had come out. He said hello, you know. He said there's a no solicitation, no distribution. You're not supposed to solicit or distribute while you're on the property. It wasn't time for us to work. He had to ask us to leave our handbilling on the side of the property.

. . . .

I recall we stayed where we were at. We moved up. We handbilled a little bit and nobody seemed to take the handbills, so we went ahead and left.

Creger testified that when Dale Jones told them they were not supposed to distribute on the property, they moved closer to the public road.

Dale Jones testified,

. . . They would block traffic from coming and going from the two (2) sorts. I just went out and told the three (3) individuals I said I don't care what you pass out to the employees. I said please don't do it on property. I said that, you know, as a company had a no solicitation policy and would you please just back up to the side of the road.

Respondent Threatened Employees with Arrest for
Engaging in Union Activities

Employee John Creger, along with Bobby Blakney, Bobby Thomas, and John Marlin handbilled for the Union again in March 1989. Creger recalled that it was on either March 16, 27, or 28 and that it was also between 4:30 and 5 p.m.

Creger testified that he was off duty at the time:

Butch Riggelman, sort manager at the time, excuse me. At first the guard come out and told us we would have to go and we said no, we're here to handbill.

. . . .

Butch had come out. He said that's fine . That "you all can handbill, but you have to do it off the property." We told them that this wouldn't be the property. He said yes, it is. He said "if I have to I'll get some cars and block it where you all can't handbill." So, we said "we're not doing anything wrong."

So, Butch said "do you want me to call the police" and we said yeah. So, he called the police and approximately ten minutes later the police had arrived. There

were three police officers. One had went up to Butch to talk for a few minutes. I don't know what they said. He proceeded to walk over to us.

He said he wasn't here for the Union or the Company. That he was here just to enforce the laws. We were talking about the note, you know, as far as the handbilling procedures and he didn't understand it.

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The police officer

but he said, more or less, you could handbill feet or 15 steps from the center of the line which, after he counted it off, it put us right in the middle of the traffic going to RPS. We knew we would block it . Our purpose wasn't to block nobody or to have nobody not go by or come in. Our purpose was to handbill. So, me and Bobby moved to the side within that 15, so they can come back and forth.

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Rigglesman said "Bobby, you're off the property." Bobby said "no, I'm not. I'm within the 15." He said "well, I'm going to have to call the cops." So, we said go ahead.

Q. Were you on Company property at that point?

A. Yes, it was Company property, but it was the 15 steps the police officer said . Like I said, we knew that, but the police officer said that was alright . That was 15. Like I said, when he counted off 15 that put us in the road and our purpose wasn't to block nobody, so we moved over 15.

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[The police] had come back again. They went to talk to Bobby and he came back to us and said well, he don't want to file—

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Butch didn't want to file the restraint—not a restraining, but a complaint or take out a warrant against him. Since he couldn't take out a warrant there wasn't nothing Butch could do. At that time it was already time—nobody was coming in or anything, so we just dispersed, you know and went our own ways.

Butch Rigglesman testified about the incident:

I told them that they needed to stay clear of the traffic, because they were creating a bottleneck of people leaving work and coming into work. There were on the noon sort about forty or fifty people that were trying to leave and with the twilight sort, the 4:30 sort, those people coming to work was anywhere from sixty-five to seventy-five people coming to work. So, there was a very congest area and I asked them to stay off the property. To allow the people to come to work, be on time. I did not ever tell them they could not handbill.

Q. Did you ever stand and observe handbillers?

A. The only time I was in the presence of when the people were handbilling, but that was only to keep them from the congested area. To say that I stood there and just watched for people, no, sir, I didn't. When I was out there it was for a particular reason, you know, to stop the bottleneck.

On April 6, Creger, along with Bobby Blakney, John Marlin, and Bobby Thomas, handbilled again at the same time, 4:30 to 5 p.m.

Richard Shelton had come out.

He was, at the time, our new terminal manager. He introduced himself. He said "you're not supposed to be on property." We were on that 15 which was on the property that the police officer had said. We told him we were here to handbill. He said "you have to be off the property on the road." Bobby Blakney asked him, how are they supposed to handbill. Richard said, "just come and tell them to come over here in a sarcastic way. You know, just say hey, come over here, I have something for you." He asked did we want him to call the police.

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We said yeah. So, he went in there and Butch Rigglesman had come out. When Butch Rigglesman come out people weren't talking to us. They were, like, moving on.

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At the time the police had showed up. Like I said, this was a different police officer. He went to talk to Butch first. Then, he came to us. He asked us, you know, all he says, there's nothing—

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The police officer and we told him we were within the 15 steps that the fellow police officer had set the previous time. He said "well, just stick to the 15." He didn't know nothing about the book. Then he went on his way. Butch had come out there again. Butch was still out there. We were talking.

Q. Do you recall anything else?

A. Something between him and Bobby, they were talking. He said he was going to call the police again. So, the same police officer came out again and this time he made a comment that he wasn't going to come out every five minutes.

Q. Who said that?

A. Police officer. He had went up to Butch first. He asked Butch if he wanted to take a warrant and Butch said no. He said there was nothing he could do. At that time it was about time to go, so we packed up and left.

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Q. At anytime while you were handbilling, did you block any incoming or outgoing traffic?

A. No, ma'am.

Sergeant Mike Brim of the Kernersville Police Department testified in corroboration of the above testimony. Sergeant Brim recalled that he came to Respondent's facility after being called on March 31 and April 6, 1989.

Richard Shelton, Kernersville hub manager since March 1989, testified that he went out to the handbillers and asked them to move from Respondent's property, where according to Shelton they were blocking employees. Shelton testified they refused and he told them he would have them removed. However, according to Shelton, he left and returned to his office without doing anything to have the handbillers removed.

When asked if he actually saw the handbillers block traffic, Shelton testified,

It was being constricted. Definitely constricted.

I didn't testify that there was any blockage. I didn't say one was or the other. As I told you, I was only there for three (3) minutes.

To the best of my recollection no one stopped while I was there and blew their horn.

Respondent Engaged in Surveillance of its Employees' Union Activities

Creger and John Marlin testified about Sort Manager Butch Riggleman observing their handbilling in late March and on April 6, 1989.

John Marlin's testimony included:

Q. Directing your attention back to April 6, 1989, do you recall if any Company supervisors were standing outside where you were handbilling?

A. Yes. Mr. Riggleman, he came out there.

Q. Do you recall where he was standing?

A. Standing right on the same place he was standing the previous time, by the guardhouse.

Q. You say he was standing by the guardhouse, is he then visible to employees coming and going from the plant?

A. Yes, he is very visible because the employees would walk in and pass right by him.

Q. Prior to Mr. Riggleman's arrival outside the guard shack that you previously testified to, were employees taking your handbills while you were handbilling?

A. Yes, the employees were taking the handbills. The majority of them were taking handbills before Butch came out there. . . . After Butch came out there it seemed like fewer employees took them. Most of them just ignored us and went on about their business.

As shown above, Butch Riggleman testified about the incident:

I told them that they needed to stay clear of the traffic, because they were creating a bottleneck of people leaving work and coming into work. There were on the noon sort. . . .

Q. Did you ever stand and observe handbillers?

A. The only time I was in the presence of when the people were handbilling, but that as only to keep them from the congested area. To say that I stood there and just watched for people, no, sir, I didn't. When I was out there it was for a particular reason, you know, to stop the bottleneck.

Respondent Threatened to Evict its Employees Because They Engaged in Union Activities

The evidence showed that employees John Creger, John Marlin, and Bobby Thomas and Teamsters Representative Bobby Blakney handbilled near the entrance to Respondent's Kernersville facility on April 6, 1989. Richard Shelton,

Kernersville hub manager since March 1989, testified that he went out to the handbillers and asked them to move from Respondent's property, where according to Shelton they were blocking employees. Shelton testified they refused and he told them he would have them removed. However, according to Shelton, he left and returned to his office without doing anything to have the handbillers removed.

The 8(a)(1) and (3) Allegations

These allegations include that Respondent suspended its employee Chris Fawlkes, and discharged employees Willie Rennick and Chris Fawlkes because of their union activities.

Respondent used its Kernersville facility as a distribution hub in its business of pickup and delivery of small packages. Both the alleged discriminatees, as well as most of Respondent's employees at Kernersville, were part-time employees that worked on unloading, loading, and sorting packages which were either arriving at or departing from Respondent's Kernersville facility. Packages arriving at Kernersville were unloaded then sorted through use of a conveyor system that used several different belts. Packages were unloaded, sorted to the various conveyors, and loaded by employees such as Fawlkes and Rennick.

The General Counsel offered testimony regarding the issue of animus. Respondent's former regional manager in the Carolina region from September 1986 through September 1988, Geoffrey Grenert, testified about meetings he attended during Respondent's regular quarterly regional meetings at Pittsburgh, Pennsylvania, in 1987. Grenert testified that he was told during those meetings, that there had been union activity at one or two terminals in Detroit, and the Company was concerned that union activity may spread to other terminals. Grenert testified:

Basically, the company posture was we wanted to keep the Union out. It wasn't in the Company's best interests. I can't remember exactly the words that were spoken or who spoke them, but it was, basically, we're going to do everything we can to keep the Union out. People gave ideas, you know, we just polled all the other regional managers and we went through all our regions and all our terminals and talked about if this was a strong Union hold or if this was not a strong Union hold or what the philosophy of the contractors was. What their posture was. It was basically a meeting to set the tone that we would have a battle on our hands and we were going to win the battle.

Grenert recalled that he noticed when the Teamsters began organizing activity at Kernersville. He testified about employees that wore Teamsters shirts:

There were at least three. There may have been more, but I didn't see them. Charlie Farris was one. Chris Fawlkes was another. There was a third that I saw, but I can't remember who he was.

Grenert admitted that he communicated Respondent's position in opposition to the Union, to its facilities at Kernersville and throughout his region. Grenert recalled that he was criticized by his supervisor, Vice President of Operations Ivan Hoffman, because Grenert called in one of the

primary union pushers, Charlie Farris, after the NLRB election:

[Hoffman] screamed and yelled at me and called me a bunch of nasty names for being stupid and talking to Charlie Farris. Did I understand that I was putting the entire election in jeopardy? He was screaming and yelling at me.

[Hoffman] told me that he wanted that little cock sucker gone.

Q. Other than that conversation you had with Mr. Hoffman, specifically, about Mr. Farris, did Mr. Hoffman ever make any other remarks concerning pro-Union employees?

A. Yeah, we had an election in Raleigh which the Company won. There were five drivers who voted for the Union and he told me he wanted them gone.

Chris Fawlkes

Chris Fawlkes was employed by Respondent from July 13, 1987, until he was discharged in August 1988. Fawlkes started out in the load area. He progressed from low pickoff to primary sort. During the times in which Fawlkes was allegedly discriminatorily suspended then discharged, Fawlkes worked as a loader and as a primary sorter.

Fawlkes testified that he engaged in union activities from about a month after he started working for Respondent. He helped handbill before and after his work, he wore a union T-shirt, and he talked to the dockworkers about signing union cards.

Former Regional Manager Grenert testified that he and other supervisory personnel at Kernersville learned of Chris Fawlkes' union activity because Fawlkes wore a Teamsters T-shirt and Fawlkes was a close friend of known union advocate Charlie Farris. Grenert recalled that Fawlkes' name was mentioned by other management and supervisory people as being involved with the Union.

As shown above, Grenert testified about employees that wore Teamsters shirts from among the approximately 120 to 150 sorter employees:

There were at least three. There may have been more, but I didn't see them. Charlie Farris was one. Chris Fawlkes was another. There was a third that I saw, but I can't remember who he was.

The Chris Fawlkes Suspension

Fawlkes was suspended from work on one occasion. At the hearing the General Counsel amended the complaint to allege that the suspension occurred on June 21, 1988. Respondent agreed that Fawlkes was suspended on that date. Respondent contends that the suspension was not illegal.

At that time, and for several days before his suspension according to his coordinator, Orlando Peterson, Chris Fawlkes was temporarily assigned to job of loader. According to Sort Manager Butch Riggleman, he assigned Fawlkes to loader because he needed additional loaders at that time.

Fawlkes was responsible to properly load the Columbia, South Carolina outbound trailer. The job involved properly selecting and loading the packages addressed to anyone with-

in the geographical area covered by Respondent's Columbia terminal.

Fawlkes was told by Sort Manager Butch Riggleman that he was suspended because of a high number of misloads. Fawlkes complained to Riggleman that the light had been out in the trailer the night before, and that his coordinator had told him to do the best he could and that the coordinator said he would take responsibility for any misloads. According to Fawlkes, the board showed that there had been either four or five misloads by Fawlkes the night before.

Before his suspension, according to Fawlkes, he had no prior difficulties with misloads. He testified that Sort Manager Butch Riggleman told him that 10 or 11 misloads would constitute excessive misloads.

Fawlkes' coordinator, Orlando Peterson, testified that the workload necessitated using Fawlkes to load trailers from June 7 until Fawlkes was suspended for misloads on June 21, 1988. Peterson testified that Fawlkes consistently had a high number of misloads during that period. According to Peterson he talked to Fawlkes about his misloads:

The day before (Fawlkes) was suspended I had talked to him. I was explaining to him that he was on the verge of getting suspended. Technically, I could have suspended before because you are eligible to be suspended if you have three misloads or more in a trailer. But see, I wanted to work with Chris and find out what the problem was. Then I seen I wasn't getting anywhere. I told Chris "well you know, you have one more chance. You know, if you can't get it straight I'm going to have to suspend you for a day."

Peterson during his testimony was shown the June 21 "Inbound Misloads by Original Hub" report, which showed that Fawlkes had 14 misloads. Peterson testified:

I honestly think it was a lot higher than that. It was an astronomical number of misloads in that trailer.

Q. If the computer report was three pages in length, about how many misloads would that reflect?

A. I would say at least sixty.

I went on and had my regular pre-sort meeting. Then after the meeting was over I pulled Chris to the side and I showed him the document. He denied—he was like, "There is no way I could have loaded sixty misloads in this trailer."

And I was like, "Well, here it is on the printout, Chris." So, I said, "I'm sorry, I'm going to have to suspend you for a day."

He said he wanted to talk with Butch. So, him and Butch went to the office and they sat down and had a talk.

Sort Manager Butch Riggleman testified about his knowledge of the actual suspension of Chris Fawlkes:

I was in the unload area at the time [Fawlkes] reported to Orlando to work as normal.

Orlando informed him that he had in excess of fifty or sixty misloads and that he was going to be suspended. Orlando didn't allow him to work that day. We

didn't even allow him to punch in. And the two of them came walking up into the unload area, and that is where we met.

. . . .
I asked Chris exactly what the problem was. You know, I said, "Excess of sixty misloads, what was the problem?"

. . . .
He told me that Orlando had said not to concern himself with marking the packages, or reading the packages. the light had been out. He said that Orlando said to go ahead and load the trailer, but not to concern himself with the quality of the load.

. . . .
I confronted Orlando with what Chris had said.

. . . .
Orlando . . . said, "Yes" [the light was out]. . . . Orlando said, "No" [he did not tell Chris not to concern himself with marking or reading the packages]. . . . Orlando then said that he told Chris to read the packages at the rear of the trailer where the overhead lighting within the terminal, or the Hub itself, was sufficient enough to be able to read the labels.

Peterson testified that the Inbound Misloads report reflected the misloads for the preceding day. Those reports show as follows regarding the Columbia trailer which, according to Peterson, was loaded by Fawlkes on the nights before the days shown below:

June 8, 1988	3 misloads
June 9	5 misloads
June 10	excused absence
June 13	6 misloads
June 14	7 misloads
June 15	5 misloads
June 16	6 misloads
June 17	10 misloads
June 20	7 misloads
June 21	14 misloads

During the above period from the column header "274 GRNB," the Columbia trailer (which is indicated herein as Columbia or Fawlkes') showed six misloads on June 13. That number was also shown by the Hick 286 trailer. On June 13 the Charlotte trailer, "CHAR 282," also showed six misloads. No other trailer showed six or more misloads on 13.

On June 14, the most misloads on a particular trailer was seven. Both Fawlkes' trailer and the "RALD 276" trailer had 7 misloads.

On June 15 the most misloads was recorded by the Charlotte trailer—9. Fawlkes' and the "RALD 276" trailer showed the next most misloads—5 each.

On June 16, the most misloads were shown by the RALD 276 trailer—9, then by the GREE 296 trailer—8, and then by Fawlkes' trailer—6.

On June 17, the most misloads was shown by JOHN 376—13, then by Fawlkes'—10. The other Greensboro loaded trailers showed misloads on that night of 1, 2, 1, 6, 1, 1, 1, 4, 2, 3, and 8.

On June 20 the Greensboro trailer showed 8 misloads and Fawlkes' showed 7. The other Greensboro loaded trailers

showed misloads on that night of 2, 5, 4, 5, 2, 0, 4, 2, 6, 6, and 4.

On June 21 the "JOHN 376" trailer showed 17 misloads, Fawlkes' trailer showed 14, RALD 276 showed 13, and the remaining Greensboro loaded trailers showed 0, 4, 0, 3, 0, 1, 2, 2, 5, and 2.

Orlando Peterson, Butch Riggleman, and former Hub Manager Dale Jones, all recalled that the pulse report on June 21 showed that the Columbia trailer had several computer page sheets of misloads. Peterson recalled there were over 60 misloads and Riggleman and Jones both recalled that Fawlkes had some 50 or 60 misloads. In that regard Dale Jones testified:

[A] good friend that was the Columbia manager at the time, Bill Meader. He and I had always been sort of in competition with other as far as bragging to each other and stuff like that. He called me the next day raising all kind of cane that I had sent him fifty (50) or sixty (60) mis-loads and I couldn't believe it. I didn't think that we could do it, so I pulled the pulse off, I think, and saw I had two (2) or three pages of mis-loads to Columbia. I called Meader back and apologized to him.

The Discharge of Chris Fawlkes

Fawlkes was discharged on August 2, 1988, allegedly because he intentionally damaged a conveyor belt. The belt was damaged because a metal slide (C-slide) used to direct packages on to a particular belt caught under a belt and ripped the belt.

At that time Fawlkes was working the job of "primary sorter." In that job Fawlkes was responsible for activity regarding six conveyor belts. Two of the belts, the main belt and the primary belt, were involved in conveying packages to the primary sorters (such as Fawlkes), from the unload area, where they were received from inbound trailers.

The other four conveyor belts were the outbound belts—belts which conveyed packages to points involved in their eventually being loaded on outbound trailers destined to other facilities for eventual distribution to the addressee. Those belts were designated as the white belt, the brown belt, the red belt, and the green belt.

Both the white belt and the brown belt ran at foot level to the primary sort employee and, in lieu of having the employee bend over to place packages on those belts, a "C-slide" was used.

The "C-slide" is a "c"-shaped piece of stainless steel mounted on an angle iron frame. It is shaped and situated so that packages will slide down it from waist level, where the primary belt is located, to either the white or the brown outbound belt.

The red belt is located directly across from, and on the level with, the primary belt. When the primary sort employee faced the primary belt, the red belt was at waist level, directly behind him.

The green belt is also located behind the primary sort employee when he faces the primary belt, but the green belt is above the level of the red belt, at approximately head level. In order to place packages on the green belt, the primary sorter has to turn around and lift the package up to head level.

Fawlkes testified that the C-slide was damaged and, before the incident, he and Sort Coordinator Darryl Cook tried unsuccessfully to repair the slide. Fawlkes recalled,

I placed a package on the slide and it caused the slide to go back and move back under the red belt and it got caught under the red belt. Immediately when it happened I hollered at the top of my voice for someone to cut the red belt off. I went to the slide to try to pull it out. With all my strength I could not pull the slide out. So, I immediately had to run to the stop button to cut the belts off.

Chris Fawlkes testified that Dale Jones came to Fawlkes and asked Fawlkes what had happened. After Fawlkes explained how the C-slide damaged the red belt, Jones told him they had fired another employee because he damaged a belt and that Fawlkes was discharged.

Former Regional Manager Grenert was not involved in Fawlkes' discharge. He testified that he was told by supervision that Fawlkes was discharged because Fawlkes "had deliberately torn up one of the sort belts."

The parties stipulated that Respondent was unaware of any other employee who was disciplined by Respondent for damage to a conveyor belt during 1987, 1988, and 1989.

Willie Rennick

Willie Rennick worked for Respondent from May 1988 to February 8, 1989. His jobs included those of unloader, loader, bottom pick off, and top pick off. His last supervisor was Jason Grant.

In January 1989, Rennick became involved in union activity. He wore a union hat. On one occasion during the week before his discharge, Rennick wore a union sweater. He wore a union T-shirt under his shirt, but the union T-shirt was not visible. He distributed union handbills and spoke to other employees about the Union. Rennick was on the union organizing committee.

According to Rennick, he spoke to his supervisor, Jason Grant, about the Union. Rennick and Grant spoke in mid-January. Rennick spoke in favor of the Union. Grant told him that regardless of how he felt, that he, Grant, was part of management and that management did not want the Union. On another occasion, in early January, when Rennick was passing out some union membership cards before work, he had a conversation with a supervisor that he knows only as Carl,

We talked about—I was passing out some Union membership cards one morning before work and he just mentioned that, hey, you know, it's time for us to get to work. Later on he came up top and I was picking off and he told me, hey, you know, keep the cards and the activity kind of down because it's not cool is basically what he said.

On January 30, 1989, and, again, on January 31, 1989, the Union wrote Respondent's hub manager, Dale Jones, that employees including Willie Rennick, were actively involved in the organizing activities of the Union. The parties stipulated that Respondent received the above letters at some time before February 8, 1989.

February 8, 1989

On February 8 Rennick was working 4 to 9 a.m. At a meeting which included employees Antonio McKoy, Greg Strong, Steve McKoy, Dwayne McPeake, John Creger, Rennick, and Supervisor Jason Grant and, after a short while, Sort Manager Fred Lapish, Grant read from the following statement:

Good Morning,

We have the 1988 tax withholding refunds from the tuition assistance we pay to package handlers. This refund is possible due to a recent change in the federal tax law that extended the non taxability of tuition assistance for one year.

After our meeting, I will come to each of you to sign the tuition assistance refund certification and give you your check.

We have had some union activity in the past few days where the Teamsters are trying to get you to sign union cards. You are free to sign or not sign cards, but when you do, you give up your rights to the union to set dues, special assessments and even *fine* you for violating the Teamsters constitution.

We are opposed to the union because their real motive is to put us out of business and out of competition with UPS.

The day Philadelphia opened, the Teamsters picketed the entrance and tried to prevent us from operating. It took a court order to allow us to commence operations. We would hate to have something like that happen here, but its a fact that with unions you run the risk of strikes.

READ THE PHILADELPHIA STORY

Two years ago, the contractors at Detroit and Huntsville voted in favor of the Teamsters in an election. Those are the only two locations in RPS to do so. How do they feel about their choice? Both terminals have petitioned the Teamsters overwhelmingly to withdraw as their union representative.

Show the petitions

Don't make the same mistake they did and believe wild promises the Teamsters can't deliver. You are here for an education—not to help UPS put us out of business. Don't sign a card unless you're absolutely sure you know what you're doing. Are there any questions? Thank-you. Let's go to work.

Willie Rennick was discharged allegedly for disrupting the above meeting. Rennick's testimony as to what occurred in that regard, includes the following:

I turned to [employee] Mr. Strong and I made a comment. I said "Greg, you know [Jason Grant's comment that the Union would charge high dues and a person could be dismissed or fined for not paying those dues], that's bullshit." Greg returned the same comment. He turned back to me. He said, yeah, he said "I agree. That's bullshit." At this time Mr. Lapish that was at the meeting at that time, he spoke up and he

pretty much singled me out. He said "Mr. Rennick, you know, you need to be quiet. You're disturbing the proceedings." At that time I did as he had I asked.

At that point there was commotion. Somehow there was—we wanted to find a pen. I can remember I asked Mr. Creger for a pen. John asked Dwayne and it went on like that. You know, whispering, we were looking for a pen and I asked Mr. Strong and he said he didn't have a pen. At that time Mr. Lapish intervened again and he told me to be quiet which, you know, he singled me out because actually when he told me to be quiet there was someone else speaking. So, I, you know, him being the supervisor, I did. I was quiet.

Mr. Grant continued the meeting and at a point where at that time that he told me to be quiet [Lapish] also made mention that, "hey, look guys, there will be a chance for everybody to ask questions or whatever at the end of the meeting."

Mr. Grant went on with the meeting. At one point he was pretty much through with the meeting and he had begun to pass out a page here which had a list of names that was supposed to have been from a Detroit, Michigan plant that—these people wanted the Unions from the statement he read. These people wanted the Union's collective bargaining power to be taken away. They didn't want the Union representing them anymore. That was being passed around.

As he passed the names and the pictures around, Mr. Creger began questioning him, Mr. Grant, as to how do we know what's going on in this picture (i.e., Xerox document showing picture entitled Philadelphia Terminal March 11, 1985).

(Grant) couldn't answer the question. At that point me and M. Creger, we really weren't satisfied with the answer that was given in the picture. I intervened. I asked Mr. Grant, again, I said "well, Mr. Grant, in the picture it doesn't seem to show what's going on" and at that point I was cut off by Mr. Lapish and told that I needed to be quiet which I did.

At that point there was more conversation and what going on, interaction between people. I tried to, again, address Mr. Lapis and once I got that much out of my mouth he told me hit the clock.

At that point I started to the time clock and I had taken, maybe, 15 or 20 steps or so and it dawned on me that, you know, what am I doing. I mean and why is he telling me to hit the clock. I then turned around and went back just to find out what—are you firing me or—because he didn't make it clear. He just said hit the clock.

On my way back Mr. Lapish told me, "Mr. Rennick, you know, you need to leave. Get off the property." He got very emotional, very loud and he said "I'll call the Sheriff's department." I can remember the only words that I was able to get in is "what's wrong. What have I done?" He was pretty much upset. He drew a lot of attention to the area because he had gotten very loud.

Afterward Rennick was taken to Dale Jones' office and discharged.

Greg Strong testified in substantial agreement with Rennick. However, Strong recalled that after he and Rennick said bullshit and Lapish told Rennick to be quiet, Rennick mumbled, "Okay, but I've got something to say."

Strong's testimony regarding the February 8 meeting continued after the above comment by Rennick:

So, upon this time Jason [Grant] started back reading and he read I'd say four or five more sentences and everybody is more or less talking now, while Jason is reading. All seven of us. And myself and Mr. Rennick would look at each other, everybody else is finished talking by now. Myself and Mr. Rennick look at each other and say, you know, "I think that is a lie." I say, "I think that is a lie, too."

So, from there maybe all seven of us talked for another eight, ten seconds. Jason begins reading again. And at this time Mr. Rennick begins asking all of us for a pen. I'm not exactly sure what he wanted to write down. Maybe he wanted to write down what Jason was reading. Jason continues reading. And then about three or four more sentences, Mr. Rennick stated, "I don't think what you're saying is fair."

At this time Mr. Lapish asked Willie to be quiet again. He points his finger at him, said, I told you to hush. I want all of you to hush while I am paying you and you're on my timeclock."

So, everybody gets more or less pretty quiet from there. And then . . . [Grant] is finished. . . . Willie says, "I want to talk."

And at this time, this is the third time, Mr. Lapish—I specifically remember his quote, "That is it, you're out of here. Hit the clock."

Willie proceeds halfway, maybe fifteen, twenty steps to the timeclock, turns around and says, "I'm not clocking out. You are going to have to clock me out if you want me to leave."

Sort Manager Fred Lapish testified that he was not present when Coordinator Jason Grant started his meeting on February 8. Two coordinators were holding separate meetings for their respective crews at the same time. Lapish, who is the supervisor over the first-line supervisors (i.e., the coordinators), testified that he walked over when he noticed that Jason Grant's

meeting seemed to be somewhat out of control. . . . There was a lot of talking going on.

Determination as to Credibility

The 8(a)(1) Allegations

Several witnesses for the General Counsel testified about the alleged 8(a)(1) activity. Those included John Creger, John Marlin Jr., Sergeant Mike Brim of the Kernersville, North Carolina police department, Bobby Lee Thomas, and Greg Strong. In general, I found their testimony to be straightforward and credible. There were some conflicts in their testimony. However, I found those conflicts to be nothing more than what would be normal and in accord with the inaccuracies of memories. For example, John Creger recalled

that, during a speech by Dale Jones, Jones referred to Respondent being \$40 million in debt. Greg Strong recalled that Jones referred to Respondent being \$60 million in debt.

I credit the testimony of Creger, Brim, Thomas, and Strong to the extent they do not conflict with each other.

Respondent Threatened its Employees with Closure of
the Terminal and Loss of Jobs Because They Engaged
in Union Activity

I am persuaded that testimony illustrating that former Hub Manager Dale Jones threatened employees with plant closure should be credited. Greg Strong and John Creger testified that Jones threatened to close the facility because of the Union in view of Respondent's indebtedness.

Although Jones denied threatening to close, he admitted that he did in fact compare Respondent's situation with that of McLain Trucking.

Jones' testimony in that regard did not make sense. He testified:

. . . the McClain [sic] incident was an example that we were using or used this particular day to show that we—that we felt as a company we were opposed to Teamsters and they were trying to organize us, because we were in direct competition with UPS, and our at our young stage of the company we just couldn't afford it. We were in debt and that if we were organized that we felt that the Teamsters best interest was not with the employees of the company such as McClain [sic] Trucking and that a similar incident that could happen to RPS and never once said we would close the Kernersville facility.

Jones did not explain what he meant by his admitted comments that Respondent's situation was similar to McLain's, or what he meant by his reference to Respondent's competition with UPS, or by his reference to the debt problem Respondent was facing.

I found both Creger and Strong testified credibly in regard to Jones' comments. Jones' admissions are in accord with what he allegedly said to the employees. Those admissions show comments which give the clear impression that Respondent could not continue in business if the Teamsters were successful in view of their debt problem and their competition with UPS. Jones admittedly said their problem was similar to McLain who was forced to take drastic steps because of a union campaign.

I credit the testimony that Jones threatened the employees with closure.

Respondent Orally Promulgated a No-Solicitation, No-
Distribution Rule Prohibiting Solicitation and
Distribution of Union Literature in Nonwork Areas
During Nonwork Times

The testimony, including the testimony of former Hub Manager Dale Jones, shows that the employees were prohibited from solicitation and distribution of handbills for the Union in the nonwork areas at and near the parking lot.

Moreover, I am convinced there was no evidence of the handbillers blocking traffic. Several witnesses, including Butch Riggleman and Richard Shelton, indicated there was no traffic actually blocked by the handbillers. Riggleman ac-

tually told the handbillers that he would block traffic by pulling cars up in order to prevent the handbilling. Shelton testified that the traffic was constricted but was not actually blocked.

Respondent Threatened Employees with Arrest for
Engaging in Union Activities

The evidence, including the testimony of the handbillers, the Kernersville police, Butch Riggleman and Richard Shelton, illustrated that the handbillers were threatened with Respondent phoning the police. Butch Riggleman actually phoned, or had others phone, the police on two occasions.

Respondent Engaged in Surveillance of its Employees'
Union Activities

The testimony of Butch Riggleman illustrates that he did stand at the guard shack in full view of employees and observe the handbillers' efforts to distribute prounion handbills. Although Riggleman testifies that he was there to insure there was no traffic blockage, there was no effort made by him to show that he was engaging in anything other than open surveillance.

Respondent Threatened to Evict its Employees Because
They Engaged in Union Activities

As to the April 6, 1989 handbilling, Hub Manager Richard Shelton admitted that he did threaten to have the handbillers removed if they did not move from Respondent's property.

The 8(a)(1) and (3) Allegations

As to the allegations regarding personnel actions against Fawlkens and Rennick, I have considered the credibility of several material witnesses.

The Chris Fawlkens Allegations

Geoffrey Grenert

Geoffrey Grenert, Respondent's regional manager until September 1988, was called by the General Counsel. Grenert impressed me as a sincere witness. I was impressed with his demeanor. There were no alarming irregularities in his testimony. His testimony is credited.

Chris Fawlkens

Chris Fawlkens' testimony included several conflicts with other evidence.

As to the matters involved in Fawlkens' allegedly illegal suspension, Fawlkens testified that he was transferred to loader for only the night preceding his suspension. However, his coordinator, Orlando Peterson, and Sort Manager Butch Riggleman both testified that Fawlkens had been transferred to loader over a week before his suspension.

The timecards in evidence support the testimony of Riggleman and Peterson. Those timecards show that Fawlkens worked as a loader from June 7 until after his suspension on June 21.

Fawlkens testified that on the day of his suspension he noticed that he was listed as having around four or five misloads. Again, Fawlkens' testimony conflicts with that of Peterson and Riggleman. Both Peterson and Riggleman testi-

fied that the pulse reports showed that Fawlkes had around 60 misloads on the evening before. As to that testimony the records are not in evidence. Butch Riggleman testified that that pulse report had been destroyed. The regional misload reports, which are in evidence, disagreed with Fawlkes and with, according to Peterson and Riggleman, the pulse reports. The misload reports show that Fawlkes had 14 misloads on the night before his suspension. That report is in agreement with a pretrial affidavit given by Chris Fawlkes. In that affidavit Fawlkes testified,

For the trailer I helped load on July 12th [sic], there were about fourteen or fifteen misloads.

Fawlkes changed his testimony under cross-examination in order to explain the conflict with his pretrial affidavit, to reflect that although the misloads shown on the blackboard were 4 or 5, Riggleman told him that there were about 14 or 15 misloads. However, that testimony conflicted with Fawlkes' direct testimony where he testified that Riggleman did not mention a specific number of misloads but said only, that Fawlkes had a high rate of misloads.

Fawlkes also testified, in conflict with Orlando Peterson and Butch Riggleman, that he was never cautioned or warned about misloads before his suspension. Both Riggleman and Peterson said they each talked to Fawlkes about misloads before his suspension.

In view of the above I am unable to credit Fawlkes' testimony.

Orlando Peterson

Orlando Peterson testified about the suspension of Chris Fawlkes. Peterson's testimony, when compared with other evidence, appeared to involve exaggerations.

For example, Peterson testified that it was Respondent's policy to suspend loaders when the loader was responsible for three or more misloads during a shift. However, Respondent's business records illustrated that was not Respondent's practice. An examination of Respondent's misload reports for the period immediately before Fawlkes' suspension shows that from June 7 to 21, for the 13 trailers loaded at Kernersville, there were 7 cases of 3 or more misloads on June 7 (report of June 8); 7 cases (again) of 3 or more misloads on June 8; 7 cases (again) of 3 or more misloads on June 9; 9 cases of 3 or more misloads on June 12; 8 cases of 3 or more misloads on June 13; 5 cases of 3 or more misloads on June 14; 9 cases of 3 or more misloads on June 15; 6 cases of 3 or more misloads on June 16; 9 cases of 3 or more misloads on June 19; and 6 cases of 3 or more misloads on June 20.

If, as Peterson testified, Respondent's policy was to suspend anyone with three or more misloads, it is apparent that Respondent would have suspended from 5 to 9 employees every night during the period from June 7 through 20. However, Respondent did not suspend anyone other than Chris Fawlkes, during that period of time.

Peterson testified that he would suspend an employee on the second occasion of 10 or 15 misloads during a shift. Of course, that testimony conflicts with Peterson's testimony that it was Respondent's policy to suspend upon three misloads.

Moreover, Peterson's testimony regarding suspension for 10 misloads on 2 occasions does not square with Respondent's misload records. Peterson testified that he supervised the loading of three trailers. Peterson's testimony regarding suspensions of employees under his supervision does not include reference to anyone he suspended specifically because the employee had 10 or more misloads on two occasions. As to all 13 trailers, Respondent's June 7 through 20 misload reports, for example, show that at least 1 other loader had more than 10 misloads on 2 occasions, but was not suspended. Trailer "JOHN 376" showed 13 misloads on June 16 and 7 misloads on June 21. Peterson testified that he and the other coordinators followed the same rules and regulations and that they cleared their disciplinary actions with their supervisor, Butch Riggleman. Therefore, the treatment of loaders should follow similar paths between coordinators. Peterson's testimony that a loader would be suspended for 2 occasions of having 10 or more misloads is in conflict with the above-mentioned evidence regarding loading trailer JOHN 376.

The above shows that Respondent's practice was substantially different from what was pictured in Peterson's testimony. Peterson was either testifying without regard to actual practice or his understanding of the practice was erroneous. If he lacked knowledge of the actual practice he should have testified that was the case. In either situation, whether by knowingly testifying as to matters of which he lacked knowledge, or by mistake, the above illustrates that Orlando Peterson's recollection seriously conflicted with more reliable evidence and was unreliable.

In view of my finding, I am unable to credit Peterson.

Butch Riggleman

I found the testimony of Sort Manager Butch Riggleman to be generally reliable. Although Riggleman's testimony regarding the 8(a)(1) allegations was not in full accord with other evidence, the differences were no greater than differences in the testimony of various witnesses of the General Counsel.

Riggleman appeared to testify truthfully. I was impressed with his demeanor and, to the extent his testimony does not conflict with evidence which I find to be more credible, I credit the testimony of Riggleman.

The Two Misload Report Forms

There was testimony, primarily from Butch Riggleman and Orlando Peterson, to the effect that Respondent received two misload reports. According to both Riggleman and Peterson, the sort managers and coordinators routinely received a report called the pulse report. The pulse report was customarily received before the beginning of each loader's next shift. Routinely, the pulse report was the only report seen by coordinators.

According to Riggleman, Peterson, and Hub Manager Dale Jones, the pulse report for June 21 showed that Fawlkes had some 50 or 60 misloads.

In addition to the pulse report, there is also prepared another inbound misload report that is routinely received much later than the pulse report. That report, which is in evidence, shows that Fawlkes had 14 misloads on June 20. Riggleman

testified that someone for Respondent may have intentionally misrepresented the number of misloads as 14 rather than 60.

As shown above, I found the testimony of Butch Riggleman to be generally credible. In that regard I do credit Riggleman's versions of conversations he had regarding the suspension of Chris Fawlkes including portions of those conversations in which he referred to the missing pulse reports.

The two-report issue raises concern as to whether Fawlkes had 14 or 50, 60 or so misloads on June 20. However, the record showed that Respondent does maintain both types of misload reports. Pulse reports were available even though the particular pulse report for the June 20 shift was missing.

Although I am concerned, I am unable to determine that evidence to the effect that the June 20 pulse report was inadvertently destroyed is unreliable.

Was Fawlkes Cautioned About Misloads Before His Suspension?

Orlando Peterson, who I found to be less than reliable, testified that he cautioned and eventually suspended Fawlkes, because Fawlkes continued to show an unacceptable number of misloads each night. Fawlkes, who was equally unreliable as a witness, testified that he was not cautioned about misloads before his suspension. I would not credit either Peterson or Fawlkes. However, Riggleman, who was more reliable, also testified that Fawlkes was cautioned by him regarding his continuous misload problem during his June 1988 loader assignment. In that regard, both Riggleman and Peterson are supported by the misload reports in evidence. Those reports show that although Fawlkes did not lead in misloads on any particular evening, he did continuously run an above average number of misloads. In view of the fact that Peterson was an experienced employee, who had progressed beyond the position of loader, I credit the testimony that Riggleman and Peterson found Fawlkes' misloads unacceptable during the entire period of his June assignment.

In that regard I have outlined evidence regarding Fawlkes' misload record and I have included, *infra*, a chart comparing Fawlkes' record with that of other loaders. Fawlkes, unlike other loaders, failed to go through a single shift with less than three misloads. From the second day of his loader assignment, he failed to show less than five misloads on a single shift.

Therefore, I find that the record supports the testimony of Riggleman and I credit his and Peterson's testimony in that regard.

Did Fawlkes Intentionally Place the C-Slide on the Belt?

In view of my determination that Chris Fawlkes was not reliable as a witness, I am unable to credit his testimony that the C-slide fell on to the belt because of a defect. There was no other evidence to support that testimony.

Moreover, the testimony of former Hub Manager Dale Jones that he and Fawlkes examined all the slides in the facility and were unable to find one with a defect which would cause it to fall was not rebutted. I credit that testimony.

I notice that Sort Manager Butch Riggleman testified that Fawlkes gave him a different explanation of why the C-slide was on the conveyor belt, than the version which, according to Dale Jones, was given by Fawlkes to Jones. Riggleman testified that Fawlkes told him that he was trying to move

the slide. Jones, on the other hand, testified that Fawlkes told him that the slide accidentally fell onto the belt because of defects in the slide.

The above evidence is not in conflict. Riggleman was testifying about what Fawlkes told him shortly after the slide tore the conveyor belt. Jones was not present during that conversation.

At some time later, according to Jones, he asked and Fawlkes responded with a different version of why the slide was on the belt. Fawlkes allegedly told Jones that the slide fell onto the belt. Riggleman was not present during that conversation between Jones and Fawlkes.

Fawlkes did not testify after Riggleman and Jones. Therefore, his testimony did not include efforts to either explain the different versions allegedly offered to Riggleman and Jones, or to deny that he gave different versions.

There is one particular area of Fawlkes' testimony which was not rebutted. Fawlkes' testimony about the incident which led to his discharge, included the following testimony:

I told [my coordinator] Darryl Cook that the slide was damaged. At one point he tried to help fix the slide. He took some cardboard and set it down on the sort aisle and then set the slide on top of it. This did not provide any help because the weight of that slide setting on the cardboard flattened the cardboard and the slide just set where it normally had been.

In view of the failure of Cook, a supervisor, to testify, I credit this testimony by Fawlkes. That testimony shows that both Fawlkes and Cook felt there was something defective in one of Fawlkes' slides.

However, an examination of Fawlkes' testimony shows that he never made Butch Riggleman or Dale Jones aware that both he and Coordinator Cook had worked to repair the slide, or that Cook could possibly corroborate Fawlkes' assertions about the slide.

According to Fawlkes, he was told immediately by Riggleman that he had bought a belt and shortly thereafter, by Jones, that he was fired. Moreover, as shown above, it was not rebutted that Jones and Fawlkes went around after the incident, looking for the slide that Fawlkes alleged was faulty and had caused the rip. Despite all that, Fawlkes, by his own testimony, never said anything about his coordinator, Daryl Cook, being aware of problems with his slide.

Willie Rennick

The testimony of Rennick was corroborated by testimony of several other witnesses including Greg Strong and John Creger. In substantial measure Rennick was also corroborated by Respondent's witnesses.

Sort Manager Fred Lapish testified regarding his involvement in the incidents of February 8, 1989. Lapish, unlike Rennick, recalled that Rennick said "bullshit" on two separate occasions during Jason Grant's address to Grant's employees. Lapish also testified that only Rennick persisted in making comments after he, Lapish, told the employees to keep quiet.

I found Rennick to be a straightforward, direct witness.

Lapish, and the other witnesses to the February 8 incident, also appeared to be straightforward and direct. I am convinced that all those witnesses testified to the best of their

recollections. There were differences in their recollections but I do not find those differences to be anything more than normal variations in different recollections, especially in view of the fact that events developed rapidly and excitedly on February 8.

Findings

As shown above the record evidence illustrated that Respondent opposed the employees' union organizing activities. Respondent's animus was demonstrated through the testimony of former Regional Manager Grenert and through evidence of the 8(a)(1) allegations.

Geoffrey Grenert, Respondent's former regional manager, testified about 1987 and 1988. Grenert recalled that he noticed when the Teamsters began organizing activity at Kernersville. As shown above, that activity included a petition which was filed in December 1987. Grenert testified about employees that wore Teamsters shirts:

There were at least three. There may have been more, but I didn't see them. Charlie Farris was one. Chris Fawlkes was another. There was a third that I saw, but I can't remember who he as.

Grenert admitted that he communicated Respondent's position, in opposition to the Union, to its facilities at Kernersville and throughout his region. Grenert recalled that he was criticized by his supervisor, Vice President of Operations Ivan Hoffman, because Grenert called in one of the primary union pushers, Charlie Farris, after the NLRB election:

[Hoffman] screamed and yelled at me and called me a bunch of nasty names for being stupid and talking to Charlie Farris. Did I understand that I was putting the entire election in jeopardy? He was screaming and yelling at me.

[Hoffman] told me that he wanted that little cock sucker gone.

Q. Other than that conversation you had with Mr. Hoffman, specifically, about Mr. Farris, did Mr. Hoffman ever make any other remarks concerning pro-Union employees?

A. Yeah, we had an election in Raleigh which the Company won. There were five drivers who voted for the Union and he told me he wanted them gone.

Section 8(a)(1) Allegations

Threat to Close

The credited evidence illustrated that Hub Manager Dale Jones made the following comment during a speech to employees during mid-January 1989:

Dale Jones stood up on the platform type. He said good morning and that the Union people would be coming in distributing cards and all. We didn't want the Union in that we were 40 million dollars in debt. If the Union came in we would have to close because we couldn't keep up with UPS. He used McClean [sic] as an example.

The above proves that Respondent threatened its employees that it would close the Kernersville hub if the employees selected the Teamsters as their bargaining representative. That constitutes a violation of Section 8(a)(1) of the Act. *Coradian Corp.*, 287 NLRB 1207 (1988); *Taylor Chair Co.*, 292 NLRB 658 (1989).

No-Solicitation, No-Distribution

The credited evidence illustrates that Respondent promulgated and tried to enforce an illegal no-solicitation, no-distribution rule against off-duty employees that were soliciting and handbilling in a nonwork area. The employees, along with a representative from the Teamsters, passed out prounion handbills to employees as they entered and left Respondent's Kernersville hub, on occasions beginning in late January 1989. The following is typical of the testimony of how Respondent reacted to its employees handbilling:

Dale Jones had come out. He said hello, you know. He said there's a no solicitation, no distribution. You're not supposed to solicit or distribute while you're on the property. It wasn't time for us to work. He had to ask us to leave our handbilling on the side of the property.

Several employees testified that before the above incident, they were not aware of any no-solicitation or no-distribution rule.

By promulgating and attempting to enforce a rule prohibiting its employees to solicit and distribute union material during nonwork times in nonwork areas, Respondent violated Section 8(a)(1) of the Act. *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615 (1962); see also *Southern Maryland Hospital Center*, 293 NLRB 1209 (1989), where the issue is discussed even though health care cases are somewhat different than the instant situation.

Threat of Arrest

Respondent, by repeatedly threatening to call, and actually phoning, the police, implicitly threatened to have its employees arrested because they engaged in the protected activities of handbilling for the Union. The following testimony is typical of the credited evidence which shows how Respondent reacted on several occasions:

Butch had come out. He said that's fine. That "you all can handbill, but you have to do it off the property." We told them that this wouldn't be the property. He said yes, it is. He said "if I have to I'll get some cars and block it where you all can't handbill." So, we said we're not doing any thing wrong.

So, Butch said "do you want me to call the police" and we said yeah. So, he called the police and approximately ten minutes later the police had arrived. There were three police officers. One had went up to Butch to talk for a few minutes. I don't know what they said. He proceeded to walk over to us.

The evidence, which was fully litigated, actually illustrated that Respondent threatened to call the police rather than threatened to arrest. By threatening to call the police to its employees because of their protected union activities, Re-

spondent engaged in activity violative of Section 8(a)(1) of the Act. *All American Gourmet*, 292 NLRB 1111 (1989); *Thriftyway Supermarket*, 294 NLRB 173 (1989).

Surveillance of Employees' Union Activities

The credited evidence showed that Sort Manager Butch Riggleman stood near the guard shack, in a position where he was noticeable to employees entering and leaving the hub, and observed employees engaged in handbilling of union material. Riggleman offered no explanation to the employees as to why he was standing and observing their activities. Riggleman's conduct had the obvious and foreseeable result of tending to interfere with the employees' protected activities, and constitutes violation of Section 8(a)(1) of the Act. *Southern Maryland Hospital Center*, supra.

Threat to Evict

Respondent's hub manager admittedly threatened to evict handbilling employees.

Richard Shelton, Kernersville hub manager since March 1989, testified that he went out to the handbilling employees and asked them to move from Respondent's property. Shelton testified they refused and he told them he would have them removed.

Shelton's actions constitute violations of Section 8(a)(1).

The 8(a)(3) Allegations

Chris Fawlkes

Chris Fawlkes was employed by Respondent from July 13, 1987, until he was discharged in August 1988. Fawlkes started out in the load area.

Fawlkes testified that he engaged in union activities from about a month after he started working for Respondent. He helped handbill before and after his work, he wore a union T-shirt and he talked to the dock workers about signing union cards.

Former Regional Manager Grenert testified that he and other supervisory personnel at Kernersville learned of Chris Fawlkes' union activity because Fawlkes wore a Teamsters T-shirt and Fawlkes was a close friend of known union advocate Charlie Farris. Grenert recalled that Fawlkes' name was mentioned by other management and supervisory people as being involved with the Union.

As shown above, Grenert testified about employees that wore Teamsters shirts from among the approximately 120 to 150 sorter employees:

There were at least three. There may have been more, but I didn't see them. Charlie Farris was one. Chris Fawlkes was another. There was a third that I saw, but I can't remember who he was.

Additionally, as shown above, Grenert associated Fawlkes' union activities with the union activities of Charlie Farris. His testimony reveals that Grenert was told by his supervisor, Ivan Hoffman, to get rid of Farris.

Suspension of Chris Fawlkes

Fawlkes' suspension as allegedly based on high misloads while he was assigned to load trailers from June 7 through June 20, 1988.

As shown above, according to Respondent's supervisors, there were two reports used in checking misloads. The so-called pulse report was a computer printout that arrived at Kernersville shortly after the Kernersville-loaded trailer arrived at its destination. Subsequently, the regional misload report was received, but, according to the testimony of Sort Manager Butch Riggleman, was not routinely seen by the coordinators and sort managers.

According to both Orlando Peterson, Fawlkes' immediate supervisor, and Peterson's supervisor, Sort Manager Butch Riggleman, at the time of the decision to suspend Fawlkes, Respondent had in its possession only the pulse report. Although the regional misload report was received in evidence, the pulse report was, according to Riggleman, destroyed. Both Riggleman and Peterson testified that even though the regional misload report, which was received later, showed only 14 misloads on the night before by Fawlkes, the pulse report showed that Fawlkes had some 60 misloads. Riggleman and Peterson testified that it was because of the pulse report showing some 60 misloads that they immediately suspended Fawlkes.

As shown above, there were strong disputes in testimony regarding what was said when Fawlkes was suspended. In view of my credibility findings, I credit Butch Riggleman's version of that incident:

I was in the unload area at the time [Fawlkes] reported to Orlando to work as normal.

Orlando informed him that he had in excess of fifty or sixty misloads and that he was going to be suspended. Orlando didn't allow him to work that day. We didn't even allow him to punch in. And the two of them came walking up into the unload area, and that is where we met.

I asked Chris exactly what the problem was. You know, I said, "Excess of sixty misloads, what was the problem?"

He told me that Orlando had said not to concern himself with marking the packages, or reading the packages. The light had been out. He said that Orlando said to go ahead and load the trailer, but not to concern himself with the quality of the load.

I confronted Orlando with what Chris had said.

Orlando . . . said, "Yes" [the light was out]. . . . Orlando said, "No" [he did not tell Chris not to concern himself with marking or reading the packages]. . . . Orlando then said that he told Chris to read the packages at the rear of the trailer where the overhead lighting within the terminal, or the Hub itself, was sufficient enough to be able to read the labels.

Orlando Peterson testified that other employees have been disciplined because of misload problems. Peterson testified that Kelvey Green was suspended in 1988 because of his bad attitude and misload problem. Peterson testified:

I had nothing but problems with Kelvey. Kelvey would come in and he would just have a lot of

misloads and would talk to him. I explained to him that, you know, "You're eligible to be suspended." Then I would give him another chance. The next day, the same thing. So, I had to suspend Kelvey.

Q. Do you remember about how many misloads he had that caused his suspension?

A. Kelvey, he had, I'd say, somewhere in the double figures. It was [not] sixty or anything like that. I'd say something like fifteen or sixteen.

Q. Do you have any record today that would show Kelvey Green had fifteen or sixteen misloads?

A. It was documented. See, when someone is terminated or either switched to a different area, that I would turn that record over to that supervisor.

Q. And you don't know that that is kept anywhere today.

A. I'm not sure.

Peterson testified that he suspended Napoleon Crowell because of a misload problem. Crowell had problems after being hired but he improved. However, according to Peterson,

[Crowell] started to improve then it seems like a couple of days later he just started going downhill. And explained to him that he was eligible to be suspended. Then that next day he had more misloads, so I suspended him for a day.

According to Peterson he suspended Jeffrey Webb when the trailer Webb was responsible for loading had 30 misloads. Webb was not given a second chance because of the large number of misloads on that occasion.

Peterson recalled that others were also suspended for misloads, but he could not recall their names.

Sort Manager Butch Riggleman testified that Respondent has disciplined a number of employees because of misload problems.

On December 21, 1987, Respondent discharged Brian Miller. According to Riggleman, Miller placed a large number

of packages destined for various terminals into the closest truck, the Greensboro trailer. Riggleman testified that Miller's misloads exceeded 20.

Russell Morris was suspended on two separate occasions, then discharged for misloads. According to Riggleman, Morris felt he should have been promoted to pickoff. Morris misloaded 15 or 20 misloads to Raleigh on 2 separate occasions. He was suspended on each occasion probably in May 1988 and, again, in September or October 1988.

Terry Darren Drane was suspended in August 1988 for misloading the Jacksonville trailer. Riggleman testified that Drane misloaded a small bags package containing 25 to 30 individual packages.

Riggleman identified a pay and work report which was maintained by a coordinator on employee Jody Swaim. Riggleman testified that although coordinators should maintain pay and work reports, they do so infrequently. The pay and work report on Swaim shows that he was warned on June 13, 1988, for four misloads on trailer 284.

Butch Riggleman also identified a number of records showing employees disciplined for performance-related problems. Riggleman testified that usually indicated a misload problem. However, Riggleman said that he was not personally familiar with the employees involved in these records. The records show 11 employees marked "T-11," which signifies performance-related problems. Most of those employees were discharged.

Additionally, I shall consider how did Fawlkes' performance compare with the performance of other loaders during the period in question.

As indicated above, the pulse reports for the time of Fawlkes' suspension are not in evidence. Riggleman testified that the pulse reports for that time were evidently destroyed. For that reason it is not possible to compare pulse reports on the various loaders.

As to the regional misload reports, I notice that Respondent's inbound misload reports show, as to some of the trailers loaded from June 7 (misload report of June 8) through June 20 (report of June 21—Fawlkes' trailer was Colb 292):

Date	Colb 292	Hick 286	Char 282	Rald 276	Gree 296	John 376	Grnb 274
6/8	3	0	5	3	7	3	0
6/9	5	2	3	2	8	9	12
6/10	absent	6	3	0	2	3	4
6/13	6	6	6	0	3	5	4
6/14	7	0	6	7	1	0	4
6/15	5	2	9	5	3	0	0
6/16	6	2	4	9	8	4	0
6/17	10	2	1	6	8	13	1
6/20	7	2	2	4	6	4	8
6/21	14	2	0	13	2	17	8
Total	63	24	39	49	48	58	41

The above chart outlines the number of misloads recorded on Respondent's inbound misload reports for the days that, according to Orlando Peterson, Fawlkes was assigned to load.

As to misloads which led all others on designated dates, I have overprinted and underlined the respective misloads recorded for that date. On days when several tied for the most misloads, I have underlined the number but have not overprinted that number.

The above shows that Fawlkes was not the clear leader on any day during his period of loading. Fawlkes tied for the most misloads on June 13 and 14. Fawlkes led with the total number of misloads for the entire period.

Fawlkes had an average of seven misloads each shift for the nine shifts he worked as loader before his suspension. His was the highest average number of misloads for that period. The second highest misload average was John 376 with an average over 10 nights of 5.8 misloads per shift.

Trailer John 376 led in misloads on June 17 and 21. Trailer Grnb led in misloads on June 9 and 20.

The above evidence illustrates that Respondent was aware of the union activities of Chris Fawlkes; that Respondent was motivated by antiunion animus; and that Respondent had expressed, through a vice president to the then regional manager, a desire to get rid of some of its union supporters although, as shown above, not specifically Fawlkes.

However, as shown above, due to numerous inconsistencies and conflicts in his testimony, I cannot credit Fawlkes' testimony.

The credited testimony shows that Fawlkes did demonstrate a consistent misload problem from June 7, when he was reassigned to loader, through June 20. I credited testimony that Fawlkes was counseled about that misload problem and I credited testimony that Butch Riggleman and Orlando Peterson, the two supervisors involved in the decision to suspend Fawlkes, believed that Fawlkes had caused an inordinate number of misloads on June 20 (i.e., some 50 or 60 misloads).

The record shows that Respondent has routinely suspended employees with misload problems less significant than Fawlkes'.

The law does not protect employees from discipline because they engage in union activity. What the law does is hold out protection from discriminatory discipline because of employees' union activity. Here, although the case is close, I am unable to find that Fawlkes was treated in a discriminatory fashion.

Even when the pulse report is ignored and consideration is focused on the inbound misload reports, the evidence shows that Chris Fawlkes consistently reported a high number of misloads throughout June 1989. Other employees occasionally reported high misloads during that period but the others showed improvement from time to time. Fawlkes never lowered his misloads below five after his first day on the job of loader. On that first day he had three misloads.

In view of that evidence, I am unable to find that Fawlkes was suspended because of his union activities. The evidence fails to show that Respondent discriminatorily selected Fawlkes for suspension.

Discharge of Chris Fawlkes

Dale Jones was Respondent's hub manager at Kernersville from April 1988 until March 1989. Jones was not longer employed by Respondent at the time of his testimony. Jones testified about the incident:

. . . Butch Riggleman came in and told me that one of the belts had been broken or torn by a slide. I immediately asked Butch who put the slide in the belt and he told me Chris had. We went outside to where the accident occurred and I looked at the situation. The belt

was torn, probably at least forty (40) to forty-five (45) feet long. I asked where Chris was. They found Chris and Chris had originally told me that he was placing a package on the slide and that the package had moved the slide into the belt and we had another sorter right there at the same time that was sorting packages at that door once again, so I asked that person, is there anything wrong with these slides, and he said no, so Chris said well, maybe these are not the same slides, and I said "well, Chris let's you and me walk the entire sort aisle and see, if there are any slides in here that you think are the ones," so he looked at every slide in the building and he couldn't determine which one was the slide that he had placed underneath the belt, so I told Chris to come to the office with me.

I took Chris into the office and I explained to him that it was gross negligence on his part. One, he should have never put the slide underneath that belt, and number two the length of the belt being torn it would have been so easy for him to have reached an E-stop and stop that belt at that time which I don't think he did.

.
When Chris couldn't find the slide or a slide that would fit underneath the belt, I asked Chris to recreate what had happened, so he told me he started sorting, is what I asked him to do, and he sorted I guess for probably five (5) minutes and he never got another slide to fall under there and he just kept telling me the packages are not sticking like they were before, and I said "Chris have no choice."

.
I felt it was gross negligence on his part. I [sic] putting a slide underneath that belt. I felt that it was intentional. One because he did put the slide under there and two he never reached the E-Stop. I've been in this business over thirteen (13) years and dealt with all sorts of things like this and to my knowledge and experience I've never seen a slide that can be placed under a belt like this at all.

According to Sort Manager Butch Riggleman, he heard yelling from the sort area on August 4, 1988. Riggleman left the load area and went into the sort area where he found a belt had been torn. Riggleman asked Chris Fawlkes what happened:

He told me that he was moving the ("C") slide from one door to another door.

Riggleman testified that employees are cautioned not to move slides in the manner used by Fawlkes. According to Riggleman, he examined the slide and discovered there were no problems with the slide itself.

Three other employees were identified by Riggleman as having been discharged for damaging company property. Preston Bailey was discharged in May 1988, because he snapped both the yoke and the drive shaft in a switch tractor by failing to completely stop before switching from drive to reverse. Bryan Dormer was discharged in October 1987 for painting his name on one of Respondent's chutes. Darrell Crockett was fired in October 1988 for writing on the bathroom walls with crayons.

The record shows that Respondent did not routinely discharge employees for moving a “C-slide” on a conveyor belt. Butch Riggelman testified about a incident that occurred about a month before Riggelman testified on March 15, 1990. Riggelman testified that he caught employee Scott Smith trying to move a C-slide on a conveyor belt:

Q. What did you tell Scott [Smith]?

A. Number 1 I referred to this particular incident [i.e., the Chris Fawlkes discharge incident] and the damage that was done to the belt. . . . [I explained to Scott Smith] that the slides are not to be moved on moving belts. If a slide needed to be moved then it would be physically carried. They are heavy, but they will be carried stepping over the other slide or actually to be—he can just bump every one up one position.

Riggelman testified that he reprimanded Scott Smith and that he has reprimanded other sorters that he caught trying to move C-slides on conveyor belts.

As to Chris Fawlkes, Riggelman testified that he felt that Fawlkes was in position to prevent damage to the conveyor belt by hitting the emergency stop button.

The cost of the temporary repairs to the belt came to \$235.57. The replacement and installation of the belt involved \$1,034.86 in labor cost and, according to Dale Jones, between \$2210 and \$2340 (Jones estimated from \$17 to \$18 a foot) to replace the 130-foot belt. That total cost would be between \$3,480.43 and \$3,610.43.

Despite my findings above that Respondent illustrated strong antiunion animus and awareness of the union activities of Chris Fawlkes, I am unable to find that Respondent acted illegally in discharging Fawlkes.

The evidence is clear that Fawlkes’ actions caused severe damage to a conveyor belt.

As shown above, I am unable to credit Fawlkes’ testimony. However, even his testimony, raises grave concern as to his responsibility for damage to the conveyor belt.

The credited evidence shows that a slide being used by Fawlkes was permitted on a conveyor belt and that slide lodged between two belts causing one to rip over some 40 feet. Respondent’s rules prohibited placing slides on conveyor belts.

The credited evidence shows that Fawlkes was correctly identified as the employee whose slide ripped the conveyor belt. Fawlkes was unable to show how the slide came to be on the belt through anything other than intention action or negligence on his part. In that regard, credited evidence of Hub Manager Dale Jones proved that he and Fawlkes looked at all slides in an unsuccessful effort to find the damaged slide which Fawlkes claimed caused the rip. Thereafter, Jones watched as Fawlkes tried unsuccessfully to repeat what Fawlkes claimed caused the slide to fall over onto the belt.

The evidence did show that Respondent does not routinely discharge employees when the employees place C-slides on conveyor belts. Those employees are routinely cautioned not to put slides on belts and are reprimanded.

However, the record does show that Respondent has routinely discharged employees found responsible for damage to property.

Again, as I noted above, the law does not make prounion employees immune from disciplinary action. Here I am unable to find that Respondent treat Fawlkes any differently

than it would have treated a nonunion employee if that employee had caused similar damage.

I find that the credited evidence supports Respondent’s contention that Fawlkes caused severe damage to a conveyor belt. The credited evidence also shows that Respondent did not act in a discriminatory fashion when it discharged Fawlkes for that incident.

Willie Rennick

The General Counsel alleges that Willie Rennick was discharged because he engaged in union or protected activities.

The record shows that Rennick did engage in union activity. He testified that he wore a union cap, he distributed union handbills, talked to other employees about the Union, and served on the union organizing committee. However, there was no direct evidence showing that these activities contributed to his discharge.

The evidence shows that during a February 8 meeting, Rennick did speak out on several occasions and Rennick admittedly refused orders that he clock out. In view of that evidence it appears that it was not Rennick’s prior union activities, but that it was his activities on February 8 that led to his discharge.

However, the above analysis does not end the inquiry as to Rennick. Rennick’s comments during the February 8 meeting were in the nature of prounion comments. The Board has found employee comments during antiunion, captive-audience meetings, called by the employer, may be protected.¹ (See *J. P. Stevens & Co.*, 219 NLRB 850 (1975); *Prescott Industrial Products Co.*, 205 NLRB 51 (1973), revd. 500 F.2d 6 (8th Cir. 1974).)

The evidence established that Rennick’s responses to Grant’s antiunion comments led to Rennick’s discharge. Therefore, the evidence does establish that Rennick was discharged because of his activity, which may have constituted protected activity, during the February 8 meeting.

Regardless of the nature of Rennick’s comments, there remains a question of whether Respondent is entitled to take action to maintain control. In *F. W. Woolworth Co. v. NLRB*, 655 F.2d 152 (8th Cir. 1981), the court upheld the Board’s finding of a violation, holding:

The Board has held, and we agree, that an employee is engaged in concerted activity when he attempts to ask questions at a captive audience meeting, convened by management on the subject of unionization, unless the questions are pursuant to a scheme or plan to disrupt the meeting. [Id. at 153–154.]

Nevertheless, jurisprudence has established that an employer may discipline an employee because the employee speaks out in protest of antiunion remark’s, if it is shown that the employee’s activity constituted misconduct:

The Board has long held that there is a line beyond which employees may not go with impunity while engaging in protected concerted activities and that if employees exceed the line the activity loses its protection.

¹In *NLRB v. Prescott Industrial Products*, 500 F.2d 6, 7 fn. 3 (8th Cir. 1974), the court pointed out that the Board did not reach the question of whether conduct of the type engaged in by Rennick constituted union activity as well as protected activity.

That line is drawn between cases where employees engaged in concerted activities exceed the bounds of lawful conduct in a moment of animal exuberance or in a manner not motivated by improper motives and those flagrant cases in which the misconduct is so violent or of such character as to render the employee unfit for further service. [*Prescott Industrial Products*, 205 NLRB 51, 52 (1973).]

That is the issue here, i.e., did Willie Rennick's conduct during the February 8 meeting constitute misconduct.

In that regard, the evidence shows that after Rennick commented "bullshit" to one of Jason Grant's comments, he was called down by Sort Manager Fred Lapish.

The record includes evidence that another employee, Greg Strong, made a similar comment but that Strong was not called down by a supervisor.

After further comments from Rennick and others including Greg Strong, John Creger, and other employees, Fred Lapish called down Rennick again. Lapish did not call down any other employee.

Subsequently, according to the testimony of Rennick, Lapish called down Rennick on one more occasion, then Rennick was told to clock out. Rennick refused to clock out.

Subsequently, Rennick met with Hub Manager Dale Jones and, again refused a directive to clock out.

There are several questions apparent at this point of my analysis. Obviously, I must question whether Rennick engaged in misconduct but I must also consider the question of discrimination. Was Rennick, instead of any other employee, called down because of his Union activities.

Rennick was called down by Lapish even though other employees were talking during the February 8 meeting. However, there is nothing inherently illegal in the discriminatory selection of an employee for instructive directions provided the employee was not singled out because of protected activity.

The record does not support a finding that Lapish called down Willie Rennick rather than any other employee, because of Rennick's protected activities. The other outspoken employees were, like Rennick, speaking out in protest of the antiunion remarks of Jason Grant. Therefore, I do not find discrimination in the selection of Rennick.

Rennick does not dispute that he was, in effect, instructed to keep quiet on three occasions. Despite those instructions from Sort Manager Fred Lapish, Rennick continued to speak out during Grant's presentation. On the fourth occasion Rennick was told to clock out. After starting toward the clock, Rennick stopped and refused to clock out. Rennick persisted in his refusal even though Lapish told him again to clock out. In a meeting with the hub manager Rennick persisted in refusing to clock out. Subsequently he was discharged.

Former Hub Manager Dale Jones testified that Rennick continued to resist efforts to have him clock out during a subsequent meeting in Jones' office. During that meeting, according to Jones, he referred Rennick to two earlier acts of insubordination. On one occasion, Rennick was discharged but rehired, after he cursed coordinator Kyle White. On another occasion, Rennick had a run in with the regional safety and maintenance manager, Bud Evenson, who had cautioned Rennick because Rennick was walking on a conveyor belt.

I am persuaded that Rennick's actions constitute unprotected misconduct. An employer must be able to maintain some degree of control in the workplace. Here, Rennick was given five separate directives including the two directives to clock out. He persisted in talking despite Lapish telling him on three occasions to keep quiet. Subsequently, he twice refused Lapish's direction to clock out. Those activities exceed activities which the Board, in other cases, has found sufficient to warrant disciplinary actions by an employer. *Verland Foundation*, 296 NLRB 442, 446, 447-448 (1989); *Azalea Gardens Nursing Center*, 292 NLRB 683 (1989); *Elion Concrete*, 287 NLRB 69 (1987).

CONCLUSIONS OF LAW

1. Roadway Package System, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Chauffeurs, Teamsters and Helpers Local 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent, by encouraging its employees to quit their jobs because they were not members of the local union; and by threatening its employees with transfer or termination due to their union or protected activities, engaged in conduct violative of Section 8(a)(1) of the Act.

4. Respondent, by transferring its employee Donald Preston Lowe in March, 1989, because of Lowe's union and protected activities, engaged in conduct violative of Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Roadway Package System, Inc., Kernersville, North Carolina, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Engaging in conduct in violation of Section 8(a)(1) of the Act by threatening to close its facility if its employees selected Chauffeurs, Teamsters and Helpers Local 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, or any other labor organization, as their collective-bargaining representative; by promulgating and attempting to enforce a no-solicitation, no-distribution rule which prohibits employees from soliciting or distributing union literature during nonworktimes in nonwork areas; by threatening to call the

²If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

police to its employees unless the employees stop their handbilling activities on behalf of the Union; by engaging in surveillance of its employees handbilling activities; and by threatening to evict its employees because of their handbilling activities on behalf of the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Kernersville, North Carolina, copies of the attached notice marked "Appendix."³ Copies

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Rela-

of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

tions Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."